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901 Prior Art [R-30]

Note rule 104(a) in § 707.

901.01 Canceled Matter in U.S. Patent Files [R-18]

Canceled matter in the application file of a U.S. patent is not a proper reference as of the filing date under 35 U.S.C. 102e, see *Ex parte Stalego*, 154 USPQ 52. However, matter canceled from the application file wrapper of a U.S. patent may be used as prior art as of the patent date in that it then constitutes prior public knowledge under 35 U.S.C. 102(a).

901.02 Abandoned Applications [R-30]

Rule 108. Abandoned applications not cited. Abandoned applications as such will not be cited as references except those which have become abandoned as a result of the filing and acceptance of a request under rule 139.

Where an abandoned application is referred to in an issued U.S. patent the disclosure of the application is incorporated by reference into the disclosure of the patent and is available to the public. See rule 14(b).

In *re Heritage*, 1950 C.D. 419; 86 USPQ 160 holds that where a patent refers to and relies upon the disclosure of a copending abandoned application, such disclosure is available as a reference. See also *In re Lund et al.*, 153 USPQ 625; 54 CCPA 1361.

It has also been held that where the reference patent refers to a copending but abandoned application which discloses subject matter in common with the patent, the effective date of the reference as to the common subject matter is the filing date of the abandoned ap-

